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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/750,475

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Lynh Nguyen

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SUGHRUE MION PLLC

USPTO CUSTOMER NO WITH IBM/SVL

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EXAMINER

CHANKONG, DOHM

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/750,475	Applicant(s) NGUYEN, LYNH	
	Examiner DOHM CHANKONG	Art Unit 2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This non-final rejection is in response to Applicant's request for continued examination filed on 2/4/2010. Applicant amends claims 1, 2, 4, 6, 7, 8, 9, 11, 13, 14, 15, 20, and 21 and adds claim 23. Accordingly, Applicant presents claims 1-23 for further examination.

I. CONTINUED EXAMINATION UNDER 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/4/2010 has been entered.

II. RESPONSE TO ARGUMENTS

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

III. CLAIM REJECTIONS - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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- A. Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Polizzi et al* (US 2002/0023158, “*Polizzi*,” hereafter) in view of *Guenthner et al*, U.S Patent No. 5.134.588 [“*Guenthner*”], in further view of *Ohran et al*, U.S. Patent No. 5.812.748 [“*Ohran*”].**

All citations are to *Polizzi* unless otherwise noted.

Claims 1, 8, and 15

Polizzi as modified by *Ohran* discloses a method, apparatus and program product (hereinafter a “system”) comprising:

providing at least one interface module to interface with a remote application (105, fig.1);
providing port module to interface between interface module and data source (agent, 130, fig. 1);

providing a connection manager to facilitate between the interface module and port module (service broker 125 fig. 1; ¶ 21);

detecting unavailability of the data source in response to an initial request for the data source by the remote application [*Guenthner*, column 9 «lines 18-20»];

dynamically detecting availability of the data source in response to a subsequent request for the data source [*Guenthner*, column 9 «lines 16-35»]; and

reconnecting the data source to the remote application in response to the subsequent request [*Guenthner*, column 9 «lines 16-35»],

wherein the at least one port module determines a last status of the data source and reconnects the remote application to the data source based on the determination of the last status of the data source [*Guenthner*, column 9 «lines 16-35»].

Polizzi does not explicitly disclose (1) detecting unavailability and availability of a data source in response to a request and reconnecting to the data source when it becomes available; or

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(2) a port module determining a last status of the data source and reconnects the remote application to the data source based on the determination of the last status of the data source.

However, both of these features were well known in the art at the time of Applicant's invention as evidenced by *Guenthner* and *Ohran*.

1. *Guenthner* discloses the steps of detecting the availability of a data response and reconnecting to the data source when it becomes available.

Guenthner discloses detecting unavailability of a data source in response to a request for the data source [column 9 «lines 18-20»], dynamically detecting availability of the data source and reconnecting to the data source in response to a subsequent request [column 9 «lines 16-35»].

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to adapt the known technique as suggested by *Guenthner* with *Polizzi* for a client to detect the unavailability of a server but to be able to dynamically reconnect to the server when it is available again. One would have been motivated to provide such a combination to enhance a client's experience by ensuring availability of data sources [column 1 «lines 65-67»].

2. *Guenthner* and *Ohran* disclose the step of a port module determining a last status of the data source and reconnects the remote application to the data source based on the determination of the last status of the data source.

Guenthner discloses a client determining a last status of the data source and reconnects the remote application to the data source based on the determination of the last status of the data source [column 9 «lines 16-35»: the client attempts to reconnect to a server if the server is marked as "Bad" in the list] but does not disclose that a port module performs this step.

Ohran discloses a port module that performs the step of reconnecting to a data source (e.g., a server) based on a determination of the status of the data source [column 7 «lines 25-43»:

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disclosing a loadable module that reconnects to a server if the server is determined as failed].

Ohran's loadable module reads on Applicant's port module.

It would have been obvious to one of ordinary skill in the art to have modified *Polizzi* and *Guenthner's* system to have *Polizzi's* port module perform the determination step as taught by *Ohran*. Such a modification to *Polizzi's* system is merely an example of simple substitution of one known feature (*Ohran's* loadable module performing the reconnect step) for another (*Polizzi's* port module) to obtain predictable results (*Polizzi's* port module modified to perform the reconnect feature. *See* MPEP § 2143.

Claims 2-5, 9-12, 16, and 17

Polizzi-Guenthner-Ohran discloses, detecting unavailability is accomplish by software module executed in a computer. *Polizzi-Guenthner-Ohran* does not explicitly call its software module as being specified by the claims language. However, applying the detection capability to any software module regardless of its nomenclature does not produce unexpected result and is an obvious variation of design choice.

That is, having either the port module or the connection manager perform the dynamic detection function leads to the same expected results which is evidence of obviousness. MPEP §716.02(II). Conversely, Appellant has not identified any unexpected result that would occur if the detection function is performed by the connection manager or the port module. MPEP §716.02.

Claims 6, 7, 13, 14, 18, and 19

Polizzi-Guenthner-Ohran discloses, re-establishing a connection between the port module and the data source independently from initialization of the connection manager, i.e.,

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without re-initializing the connection manager [see *Guenthner*, Figure 8 | column 9 «lines 32-35» : reconnecting independent of the nameserver].

Claim 23

Polizzi-Guenthner-Ohran discloses the port module sending an error message to the interface module indicating the unavailability of the data source [*Guenthner*, Fig. 6 «item 112»]. Error messages were well known in the art at the time of Applicant's invention. It would have been

B. Claims 20-22 are rejected under 35 U.S.C § 103(a) as being unpatentable over *Polizzi, Guenthner, and Ohran*, in further view of *Brendel et al*, U.S Patent No. 5.774.660 [*“Brendel”*].

Polizzi does not expressly disclose connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications.

Brendel discloses a system whereby a load balancer is responsible for facilitating between a user and a remote application such as a server [Figure 6]. After the connection has been facilitated, the user and the remote application may connect directly with one another allowing subsequent communications from the server to be sent to the user such that the load balancer is bypassed [column 9 «lines 18-21»].

It would have been obvious to one ordinary skill in the art to modify *Polizzi*'s system to incorporate *Brendel*'s teachings; that is, to enable direct communications between *Polizzi*'s network interface and agents, bypassing the service broker, to reduce the amount of bandwidth that must flow through the broker [see *Brendel*, column 9 «lines 60-64»]. Such a modification in *Polizzi*'s system would provide substantial improvement in *Polizzi*'s service broker, as evidenced

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by the reduction in workload of *Brendel's* load balancer. *Polizzi's* service broker and *Brendel's* load balancer are analogous as they both responsible for establishing connections between user and remote applications [see *Polizzi*, 0021 & *Brendel*, column 6 «lines 25-26»].

IV. CONCLUSION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOHM CHANKONG whose telephone number is (571)272-3942. The examiner can normally be reached on Monday to Friday [10 am - 6 pm].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on (571)272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DOHM CHANKONG/
Primary Examiner, Art Unit 2452